

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 02-312-02-CR-W-FJG
)	
KATHLEEN I. McCONNELL,)	
)	
Defendant.)	

PLEA AGREEMENT

The following agreement has been made between KATHLEEN I. McCONNELL, defendant, by and through her undersigned counsel, James L. Eisenbrandt, and the United States of America, by and through the United States Attorney Todd P. Graves, and the undersigned Assistant United States Attorneys. There are no agreements or understandings as to the disposition of this case other than those set forth herein.

1. Defendant Kathleen I. McConnell agrees to enter pleas of guilty to: two counts of mail fraud in violation of Title 18, United States Code, Sections 1341, 2 and 3571(d) as charged in Counts One and Three of the Indictment; one count of wire fraud in violation of Title 18, United States Code, Sections 1343, 2 and 3571(d) as charged in Count Two of the Indictment; and one count of a false statement in violation of Title 15, United States Code, Sections 50 and 2 and Title 18, United States Code, Sections 3571(b) and (e), as charged in Count Four of the Indictment filed in this case on November 7, 2002. The defendant

also agrees to the forfeiture of \$24,539,320, as alleged in Count Five of the Indictment. The United States agrees that no additional criminal charges will be filed in the Western District of Missouri, the District of Nebraska, the Northern and Southern Districts of Iowa; the District of Kansas, and the Eastern District of Missouri, which arise from the investigation of Professional Business Services, PBS, Inc., Rio Baca, Inc. Rio Timba, Inc., United Livestock Services, LLC., and MFA Livestock Services, LLC.

2. The salient facts supporting the charges to which the defendant, Kathleen I. McConnell, shall tender a plea of guilty are:

Between late 1998 to on or about July 25, 2001, the defendant, acting together and aiding and abetting her business partner, George L. Young, knowingly and intentionally and with the intent to defraud and obtain money, made material false and fraudulent representations and promises to financial institutions such as First National Bank of Omaha and U.S. Bank, to individual clients of their businesses and to business associates such as MFA Livestock Association:

* the defendant represented that the livestock operations companies had the expertise, financial capacity and industry contacts the consistently resulted in profits for clients when, in truth and fact, Kathleen I. McConnell knew full well that the

livestock operations companies were not generating sufficient income to pay their obligations;

* the defendant paid clients rates of return far above industry averages when, in truth and fact, Kathleen I. McConnell knew that the rates of return paid to clients were not generated by the livestock operations;

* the defendant falsely represented that the inventory of cattle was far higher than it actually was;

* the defendant falsely represented that funds received from clients would be used to purchase cattle and have them fattened for market when, in truth and fact, the money was actually used to cover cash shortfalls, business expenses, and to pay other clients whose cattle had supposedly matured and been sold;

* the defendant falsely represented on checks drawn on an account owned by MFA Livestock Association that the funds were being used to purchase cattle when, in truth and fact, no cattle were being purchased and the funds were actually used to pay clients for their cattle that had purportedly been sold, but which often never existed;

* the defendant made false representations and concealed material facts from financial institutions such as First National Bank of Omaha and U.S. Bank by falsely representing in financial documents submitted to those financial institutions that cattle inventories claimed by companies owned by George L. Young and

Kathleen I. McConnell were much higher than they actually were when, in truth and fact a substantial portion of the cattle represented as inventory had never been purchased; and

* in furtherance of her scheme and artifice to defraud, during the period of the conspiracy the defendant falsely represented to clients that cattle that they were inspecting in feed lots belonged to the particular client when, in truth and fact, the defendant knew that the same herds of cattle were being shown over and over to different clients because the defendant and her business partner, George L. Young had not purchased all of the cattle they had received money for.

Count One: In furtherance of the scheme and artifice to defraud, on or about September 20, 1999, the defendant, Kathleen I. McConnell, deposited and caused to be deposited Check No. 02239 in the amount of \$1,202,381 payable to Robert Eggerling to be delivered by a commercial interstate carrier, United Parcel Service, to induce Robert Eggerling to continue to invest his money and funds in the cattle feeding operations, as charged in Count One.

Count Two: In furtherance of the scheme and artifice to defraud, on or about March 14, 2000, the defendant, Kathleen I. McConnell, transmitted and caused the transmission in interstate commerce by means of a wire communication (a facsimile transmission) requesting a \$336,937.28 cash transfer from a line

of credit at U.S. Bank from the account of George Young dba Young Farms to the account of MFA Livestock Services, LLC at First National Bank of Omaha, as charged in Count Two. The defendant stipulates that the transmission traveled in interstate commerce because it originated in Kansas City, Missouri, and was received in Omaha, Nebraska.

Count Three: In furtherance of the scheme and artifice to defraud, on or about July 25, 2001, the defendant, Kathleen I. McConnell, placed and caused to be placed in a post office or authorized depository for mail matter a false and fraudulent Borrowing Base Certificate to be sent and delivered to First National Bank of Omaha to induce that financial institution to make an advance of funds to United Livestock Services, LLC., as charged in Count Three;

Count Four: On or about August 17, 2000, the defendant, Kathleen I. McConnell, made and caused to be made material false entries in an account, record and memoranda required by statute to be kept by, George L. Young, Kathleen I. McConnell and their companies, that is a combined Check/Memo form for check No. 03416 drawn on the account of United Livestock Services, LLC, at First National Bank of Omaha in the amount of \$105,751.96, falsely and fraudulently representing that 162.75 head of cattle had been purchased when such purchase had not occurred as reported, as charged in Count Four. The defendant stipulates and agrees that

she and George L. Young and their companies were required to keep accurate accounts, records and memoranda under the provisions of Title 15, Chapter 2, Subchapter I relating to the Federal Trade Commission, the Packers and Stockyards Act (7 U.S.C. Sec. 181, *et sec.*).

3. The defendant acknowledges and agrees that the conduct set forth at Paragraph 2, above, is to be considered as well as all other uncharged related criminal activity as "relevant conduct" for purposes of calculating the offense level, in accordance with U.S.S.G. § 1B1.3(a) (2).

4. The defendant understands that the maximum sentence which may be imposed for the counts of conviction are as follows:

Count One: For a violation of 18 U.S.C. §§ 1341 and 2, a Class D felony, not more than 5 years imprisonment and a fine of not more than \$250,000, and a term of supervised release of not more than 3 years;

Count Two: For a violation of 18 U.S.C. §§ 1343, 2 and 3571(d), a Class B felony, not more than 30 years imprisonment and a fine of not more than \$1,000,000 or twice the gain or loss, and a term of supervised release of not more than 5 years;

Count Three: For a violation of 18 U.S.C. §§ 1341, 2 and 3571(d), a Class B felony, not more than 30 years imprisonment and a fine of not more than \$1,000,000 or twice the

gain or loss, and a term of supervised release of not more than 5 years; and

Count Four: For a violation of 15 U.S.C. § 50 and 18 U.S.C. §§ 3571(b) and (e), a class D felony, not more than 3 years and a \$5,000 fine and a term of supervised release of not more than 3 years.

Count Five: an order of forfeiture in the amount of \$24,539,320.00

5. The defendant acknowledges that she has discussed the issue of supervised release with her attorney and that she understands the nature and the effects of supervised release. In particular, the defendant understands that a violation of a condition of her supervised release may result in the revocation of supervised release and the imposition of an additional term of imprisonment of not more than 5 years with respect to the Class B felony charges (Counts Two and Three) in the Indictment and 3 years with respect to the Class D felony charges (Counts One and Four) to which she will plead guilty. The defendant further understands that if she violates a condition of supervised release, she could be required to serve all of the term of supervised release imposed by the Court, without credit for time previously served during post-release supervision.

6. The defendant understands that this Plea Agreement binds only the defendant and the United States Attorneys for the

Districts listed in paragraph 1, above, and that it does not bind any other federal, state, or local prosecution authority.

7. In return for the defendant's pleas of guilty to the charges set forth in the Indictment, the United States Attorneys for the Districts listed in paragraph 1, above, agree not to file any additional criminal charges against defendant arising out of the present offenses or investigation of this case. In the event that the defendant breaches or violates this Plea Agreement or otherwise fails to adhere to its terms, the United States shall not be bound by this paragraph and may pursue any additional charges arising from the criminal activity under investigation as well as any perjury, false statement, or obstruction of justice charges which may have resulted. If it is determined the defendant has made a material false statement concerning any information provided to investigators during proffer sessions and relating to the recovery of assets, the United States will take the position this constitutes a violation of the plea agreement. The defendant understands and agrees that in the event she violates this Plea Agreement, all statements made by her to law enforcement agents subsequent to the execution of this Plea Agreement, any testimony given by her before a grand jury or any tribunal or any leads from such statements or testimony shall be admissible against her in any and all criminal proceedings. The defendant waives any rights which might be asserted under the

United States Constitution, any statute, Federal Rules of Criminal Procedure, Section 11(e)(6), Federal Rules of Evidence, Section 410, or any other federal rule that pertains to the admissibility of any statements made by her subsequent to this Plea Agreement.

8. The defendant understands that if the Court accepts this Plea Agreement but imposes a sentence which defendant does not like or agree with, she will not be permitted to withdraw her plea of guilty.

9. The defendant understands that a mandatory special assessment of \$400 will be entered against the defendant at the time of sentencing. The defendant stipulates and agrees that within 10 days of the entry of her plea of guilty, she shall deliver the \$400 to the Clerk of the Court and will present a receipt for that deposit to the Court to plaintiff's counsel.

10. The defendant understands the United States will provide to the Court and the United States Probation Office a government version of the offense conduct. This may include information concerning the background, character, and conduct of the defendant including the entirety of the defendant's criminal activities. The defendant understands these disclosures are not limited to the counts to which the defendant will plead guilty. The United States may respond to comments made or positions taken by the defendant or defendant's counsel and to correct any

misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject only to any limitations set forth in this Plea Agreement.

11. The parties stipulate and agree that for purposes of determining defendant's offense level pursuant to the United States Sentencing Guidelines and for restitution purposes, the amount of loss suffered by the victims as a result of the defendant's conduct in the mail and wire fraud scheme is approximately \$160,000,000. The defendant agrees that the Court may order restitution up to the full amount of the loss resulting from the counts of conviction and all relevant offense conduct. More specifically, the defendant agrees that the Court may order restitution to any and all victims, including both financial institutions and individual victims sustaining losses as a result of the scheme to defraud arising from the counts of conviction and the relevant offense conduct relating to such scheme.

Based on defendant's agreement to forfeiture under Count Five, the defendant understands that the United States will request an order of forfeiture resulting in a monetary judgment against the defendant. The United States has informed the defendant and the Court, and will inform the victims, that if any assets are recovered in a forfeiture proceeding, those assets will be used to reimburse victims of the scheme.

The parties agree that the following provisions of the United States Sentencing Guidelines may be applicable in this case. The United States submits that the following are the sentencing guidelines applicable to this case. It is further agreed by the United States, however, that the defendant may contest the amount of loss set forth below as being overstated under Section 2F1.1, *Application Note 11*, and may contest the application of any of the following guideline provisions and guideline calculations:

a. The sentence in this case is governed by the provisions of § 2F1.1, U.S. Sentencing Guidelines (November, 2000 edition¹), which provides the highest offense level

- b. Under § 2F1.1(a), the base offense level is 6;
- c. Under § 2F1.1(b)(1)(S) increase the base offense level by 18 for a loss of more than \$80,000,000;
- d. Under § 2F1.1(b)(2)(A) increase by 2 levels for more than minimal planning and for more than 1 victim;
- e. Under § 2F1.1(b)(6)(C) increase by 2 levels for use of sophisticated means;
- f. Under § 2F1.1(b)(8)(A) increase by 4 levels because the offense substantially jeopardized the safety and soundness of a financial institution

¹ The version in effect at the time of sentencing provides for a substantially higher total offense level, requiring the use of the version that was in effect at the time the scheme to defraud terminated.

- g. For acceptance of responsibility, the base offense level should be decreased by 3 levels under § 3E1.1(b).
- h. The parties agree that if the Court determines that these provisions and no others are applicable, the appropriate range of punishment would be calculated as follows:

Base Offense Level:	6
Adjustment under § 2F1.1(b)(1)(S)	18
Adjustment under § 2F1.1(b)(2)(A) & (B)	2
Adjustment under § 2F1.1(b)(6)(C)	2
Adjustment under § 2F1.1(b)(8)(A)	4
Adjustment under § 3E1.1(b)	-3
Total Offense Level	29

Tentative Range of Punishment if the
Criminal History Category is I: 87-108 months

j. The defendant reserves her right to request a downward departure from the applicable range of punishment under the provisions of §5K2.0 and §5K2.16 of the Sentencing Guidelines relating to voluntary disclosure of the offense. Defendant understands the United States will oppose any request she files for a downward departure pursuant to §5K2.0 or §5K2.16. The United States reserves its right to request an upward departure from the applicable range of punishment under the provisions of § 2F1.1(b)(1), *Application Notes* 11(a) and (f).

k. The defendant understands the estimate of the parties with respect to the guidelines computation set forth in the subsections of this paragraph does not bind the Court or the United States Probation Office with respect to the appropriate guideline levels.

12. The defendant agrees not to appeal or otherwise challenge the constitutionality or legality of the Sentencing Guidelines. The defendant understands and acknowledges that her sentence will be determined and imposed pursuant to those Sentencing Guidelines. Defendant is aware that a sentence imposed under the Sentencing Guidelines does not provide for parole. The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum established for the offense and expressly waives the right to appeal the applicability of the U.S. Sentencing Guideline provisions specifically set forth in paragraph 11, above, either directly or collaterally, and not otherwise contested by the defendant. However, if the United States exercises its right to appeal the sentence imposed as authorized by 18 U.S.C. § 3742(b), or if the Court upwardly departs, the defendant is released from this waiver and may appeal her sentence as authorized by 18 U.S.C. § 3742(a).

13. There are no agreements between the parties with respect to any sentencing guideline issues other than those specifically listed in paragraph 11, and its subsections. As to any other issues which may be found to exist, the parties are free to advocate their respective positions at the sentencing hearing.

14. The defendant waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation, any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

15. The defendant understands that the United States reserves the right in this case to:

- a. oppose or take issue with any position advanced by defendant at the sentencing hearing which may be inconsistent with the provisions of this Plea Agreement;
- b. comment on the evidence supporting the charges in the indictment;
- c. oppose any arguments and requests for relief the defendant may advance on an appeal from the sentences imposed;
- d. oppose any post-conviction motions for reduction of sentence, or other relief.

16. The defendant waives any claim under 18 U.S.C. § 3006A, commonly known as the Hyde Amendment, for attorney's fees and other litigation expenses arising out of the investigation and prosecution of this matter.

17. The United States further agrees to recommend to the Court that the defendant remain on bond until the time of surrender on the sentence imposed by the Court and that self-surrender is appropriate in this case. Furthermore, the

defendant reserves the right to request a recommendation from the Court for the sentence to be served at a specific prison facility.

18. The defendant has read the Plea Agreement, understands it, and by her signature, states that it is true and accurate and not the result of any threats or coercion. Both parties agree that no promises or agreements have been made other than those set forth in the Plea Agreement, nor has the United States promised the defendant any additional consideration to induce her to sign this Plea Agreement. The defendant acknowledges that she is entering into this Plea Agreement and is pleading guilty freely and voluntarily. The defendant further acknowledges her understanding of the nature of the offense or offenses to which she is pleading guilty and the elements of the offense or offenses, including the penalties provided by law, and her complete satisfaction with the representation and advice received from her undersigned counsel. The defendant also understands that she has the right to plead not guilty or to persist in that plea if it has already been made, the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against her, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense. Defendant understands that by pleading guilty, she waives or

gives up those rights and there will be no trial. The defendant further understands that if she pleads guilty, the Court may ask her questions about the offense or offenses to which she pled guilty, and if the defendant answers those questions under oath and in the presence of counsel, her answers may later be used against her in a prosecution for perjury or false statement. The defendant also understands she has pled guilty to a felony offense and, as a result, may be deprived of certain rights, such as the right to vote, hold public office, serve on a jury, and possess a firearm.

Todd P. Graves
United States Attorney

By

Dated: _____
Kenneth E. Weinfurt
Assistant United States Attorney

Dated: _____
J. Daniel Stewart
Assistant United States Attorney

Dated: _____
Kathleen I. McConnell
Defendant

DEFENSE COUNSEL'S REPRESENTATION

I, James L. Eisenbrandt, attorney for the above-named defendant, represent that I have fully explained to the defendant

her right regarding the pending charges in this matter. I have also carefully reviewed every provision of this Agreement with the defendant, specifically including the rights which the defendant is waiving. To my knowledge, the defendant's decision to enter this Agreement has been knowingly and voluntarily made.

Dated: _____

James L. Eisenbrandt
Attorney for Kathleen I. McConnell